LIM SAY HOE

v.

TIMBALAN MENTERI DALAM NEGERI, MALAYSIA & ANOR. & ANOTHER CASE

HIGH COURT MALAYA, PENANG
TUAN JEFFREY TAN JC
[CRIMINAL APPLICATION NOS. 44-5-95 & 44-26-95]
13 MARCH 1995

ADMINISTRATIVE LAW: *Fixing outcome of matches - Applicants arrested and detained under Restricted Residence Act 1993 - Whether the Act applies - Whether ordinary rather than detentive laws should apply - Whether Court can investigate the sufficiency of the grounds for detention - Warrant of arrest and detention not in statutory format - Whether arrest and detention null and void.*

The applicants were members of the Penang and Selangor Premier League football teams respectively for the year 1994 and are alleged to have received monetary rewards from bookmaking syndicates for fixing the outcome of premier league matches. The applicants were arrested and detained under s. 2(1) of the Restricted Residence Act 1933. The applicants challenged the arrest and detention on the following grounds:

a. The arrest and detention was outside the scope and ambit of the Act.

b. the respondents' 'grouses' against the applicants be dealt with by ordinary rather than detentive laws.

c. the Court investigates the sufficiency of the grounds proffered by the detaining authority; and,

d. since warrant of arrest and detention was not in the statutory format it renders null and void the arrest and detention.

Held:

[1] That the arrest and detention of the applicants was in the exercise of a valid legal power is beyond doubt. In the warrant of arrest and detention under s. 2 of the Act, the Minister concerned has declared that after studying the information furnished to him in writing he is satisfied without requiring any further inquiry that reasonable grounds exist for believing that the applicants should be required to reside in a particular area. The burden of proving lawful justification for the applicants' detention lies with the respondent; discharged by reliance on the warrant of arrest and detention issued in exercise of s. 2(i) of the Act, the valid legal power.

[2] Provision as to non-justiciability is notably absent in the Act which suggests the non exclusion of judicial review of the Minister's subjective satisfaction. However, the Courts have taken the consistent stand by refusing to act as the review board of the Minister's satisfaction or sufficiency or reasonableness of the grounds relied by him, for to the Minister the Act invests the satisfaction and to him that satisfaction rightly belongs.

[3] Admittedly the warrants against the applicants informed them of the alternative orders under ss. 2 or 2A. But the alternatives are at the disposal of the Minister, and in truth the warrants without the words "or s. 2A" would be misleading as it would not fully inform the

applicants of the complete range of possible orders pursuant to their arrest and detention. The addition of those words was therefore necessary to reflect factual realities, and the deviation from the statutory format was neither substantial nor calculated to mislead. In cases (as the present) which turn on the question whether statutory requirements or provisions have been complied with the *de minis maxim* has no application whatsoever; however, s. 62 of the Interpretation Act applies and the warrants are not invalidated by the inclusion of the words "or s. 2A".

[4] The arrest and detention of footballers *per se* will evidently be outside the scope and ambit of the Act. However, the applicants were arrested and detained not so much because they are or were footballers but because of their alleged complicity with bookmaking syndicates to rig premier league football matches, which they as members of their respective teams obviously could influence. The object of the Act is to preserve public security and order, and used consistently to curb vice and crooked activities, it is truly within the Act's purview to restrict the residence of those involved in the rigging of premier league football matches, as such an activity is a fraud on the unsuspecting public.

Cases referred to:

Assa Singh v. Mentri Besar Johore [1969] 2 MLJ 30 ***(refd)***
Puvaneswaran v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor. [1991] 3 MLJ 28 ***(refd)***
Ooi Cheng Aun v. Timbalan Menteri Hal Ehwal Dalam Negeri [1990] 3 MLJ 108 ***(refd)***
Karam Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia [1969] 2 MLJ 129 ***(refd)***
Menteri Hal Ehwal Dalam Negeri Malaysia & Ors. v. Chua Teck [1990] 1 MLJ 104 ***(refd)***
Minister for Home Affairs Malaysia & Anor v. Karpal Singh [1988] 3 MLJ 29 ***(refd)***
Theresa Lim Chin Chin & Ors. v. IGP [1988] 1 MLJ 293 ***(refd)***
Wong Fook Nyen v. Timbalan Menteri Dalam Negeri Malaysia & 2 Ors. [1988] 2 CLJ 274 ***(refd)***
Yeap Hock Seng @ Ah Seng v. Minister for Home Affairs, Malaysia [1975] 2 MLJ 279 ***(refd)***
Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Ors. v. Cheow Siong Chin [1988] 1 MLJ 432 ***(refd)***
Phua Hing v. Timbalan Menteri Hal Ehwal Dalam Negeri [1990] 1 MLJ 173 ***(foll)***
Perbadanan Pembangunan Pulau Pinang v. Chong Ah Yok [1993] 2 CLJ 351 ***(refd)***
Lim Hai Sun v. Officer-in-Charge Drug Rehabilitation Centre & Anor. [1992] 3 CLJ 1602 ***(refd)***
Cheow Siong Chin v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & 2 Ors. [1986] 2 MLJ 235 ***(refd)***
Lim Nyun Fui v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors. [1991] 1 MLJ 350
Re: Tan Boon Liat [1976] 2 MLJ 83 ***(refd)***

Legislation referred to:

Dangerous Drugs (Special Preventive Measures) Act 1985
Emergency (Public Order & Prevention of Crimes) Ordinance
Federal Constitution, Art. 5(1) & (3) & 162(1) & (6)
Interpretation Act 1967, s. 62
Internal Security Act 1960 (Revised 1972)
Restricted Residence Act 1933 (Revised 1989), s. 2 (i) & (ii), 2A,
Rules of the High Court 1980, Form 8A

For the applicants - Karpal Singh (Jagdeep Singh Deo with him); M/s. Karpal Singh & Co.
For the respondents - Mahmud bin Haji Abdullah; FC

JUDGMENT

Jeffrey Tan JC:

There are two applications before this Court for writs of *habeas corpus*; one application was filed here while the other was transferred for its disposal.

The documents disclose that:

(a) the applicants were arrested and detained under s. 2(i) of the Restricted Residence Act 1933 (Revised - 1989) (the Act),

(b) the applicants were members of the Penang and Selangor Premier League football teams respectively for the year 1994 and are alleged to have received monetary rewards from bookmaking syndicates for fixing the outcome of premier league matches.

Except a difference of three days to the dates of arrest and detention, the factual basis and legal issues are common in both applications, and one submission was made by the Federal Counsel and applicants' Counsel for both the applications.

In his submission, applicants' Counsel raised the following issues or arguments, that:

(a) the arrest and detention is outside the scope and ambit of the Act,

(b) the respondents' "grouses" against the applicants be dealt with by ordinary rather than detentive laws,

(c) the Court investigates the sufficiency of the grounds proffered by the detaining authority for the arrest and detention, and,

(d) the warrant of arrest and detention (Form A) is not in the statutory format, and that procedural and technical defect renders null and void the arrest and detention.

The learned Federal Counsel however, vindicated the arrest and detention of the applicants as one within the scope and ambit of the Act, and asserted that the Minister's satisfaction of reasonable grounds should not be reviewed by the Courts.

Article 5(3) of the Constitution provides that whenever the liberty of a person is deprived and a complaint is made, the Court shall inquire into the complaint and unless satisfied that the detention is lawful shall order him to be produced before the Court and release him. The preceding Art. 5(1) also provides that no person shall be deprived of his life or personal liberty save in accordance with law.

As such, whenever a person deprived of his liberty challenges his detention, it is incumbent upon the authority who detains him to show that the detention is in the exercise of a valid legal power, and once that is shown, it is for the detenu to show that the power had been exercised *mala fide* or improperly.

For a number of reasons such as public order, national security and crime prevention, the law gives to the executive powers of preventive detention, and such legislation existed long before 1957. In *Assa Singh v. Mentri Besar Johore* [1969] 2 MLJ 30 the Federal Court held that the Restricted Residence Act 1933 is a law relating to public security and its provisions are not inconsistent with the Federal Constitution and pre Merdeka laws shall continue to be in force until repealed and "any Court or tribunal applying the provisions of any existing law which has not been modified on or after Merdeka day under this article or otherwise may apply it with such modifications as may be necessary to bring it into accord with the provisions of the Constitution" (Art. 162(1) & (6) of the Federal Constitution).

However, such powers are exercisable strictly in accordance with procedure, and any detaining authority less than meticulous with the procedure laid down will find the Court's displeasure. The judgmatic words of Edgar Joseph J (as he then was) in *Puvaneswaran v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor.* [1991] 3 MLJ 28 summed up the position admirably:

> There had been a consistent current of judicial opinion in our Court, including the latest decision of the Supreme Court, which indicate that when confronted with the problem of interpreting powers of preventive detention, they have interpreted them strictly so as to require that the provisions of the relevant statute are rigid and meticulously complied with.

An apt illustration how strictly this procedure is to be observed is the case of *Ooi Cheng Aun v. Timbalan Menteri Hal Ehwal Dalam Negeri* [1990] 3 MLJ 108, where an overnight stay in a hotel (not provided by the terms of the detention order) at the detenu's expense (and comfort) was held to have vitiated the detention order.

Besides providing the procedure, the legislature also delegates powers of detention to a detaining authority upon its satisfaction that reasonable grounds exist for its exercise of detentive powers, and in the instant case s. 2(i) of the Act reads as follows:

> Whenever it shall appear to the Minister on such written information and after such enquiry as he may deem necessary that there are reasonable grounds for believing that any person should be required to reside in any particular area or should be prohibited from entering into any particular area or areas the Minister may issue an order in one of the forms in the Schedule for the arrest and detention or, if he is already in prison, for the detention of that person.

Whether the Courts should investigate into the sufficiency of the reasons or grounds relied on by the detaining authority for an arrest and detention is now well and truly settled as will be seen from the following authorities:

(a) whether there is reasonable cause to detain is a matter of opinion and policy which decision can only be taken by the executive (see *Karam Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia* [1969] 2 MLJ 129 Ibrahim J).

(b) so long as the Minister is satisfied after considering all the information available to him, it is not for the Court to question how or why he became so satisfied (see *Menteri Hal Ehwal Dalam Negeri Malaysia & Ors. v. Chua Teck* [1990] 1 MLJ 104).

(c) the subjective satisfaction of the Minister of Home Affairs is not subject to judicial review (see *Minister for Home Affairs Malaysia & Anor v. Karpal Singh* [1988] 3 MLJ 29).

(d) the fairness of the Minister's decision is subjective (see *Theresa Lim Chin Chin & Ors. v. IGP* [1988] 1 MLJ 293).

(e) Courts do not sit in appeal against the decision of the Minister regarding the material on which the detention order was made (see *Wong Fook Nyen v. Timbalan Menteri Dalam Negeri Malaysia & 2 Ors*. [1988] 2 CLJ 274 and *Yeap Hock Seng @ Ah Seng v. Minister for Home Affairs, Malaysia* [1975] 2 MLJ 279).

(f) Courts do not examine the adequacy or truth of these materials and cannot interfere with the decision on the ground that if the Court had examined them it would have come to a different conclusion (see *Wong Fook Nyen v. Timbalan Menteri Dalam Negeri Malaysia & 2 Ors.* (*supra*) and *Yeap Hock Seng @ Ah Seng v. Minister for Home Affairs, Malaysia* (*supra*)).

(g) the Court cannot arrogate to itself the responsibility of judging the sufficiency or otherwise of the grounds (see *Wong Fook Nyen v. Timbalan Menteri Dalam Negeri Malaysia & 2 Ors.* (*supra*)).

(h) the object of preventing a person from doing a particular prejudicial act must necessarily be based on grounds essentially connected with that prejudicial act (see *Karam Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia* (*supra*)).

The above however, are decisions on detentions under the Internal Security Act, Dangerous Drugs (Special Preventive Measures) Act 1985 and Emergency (Public Order & Prevention of Crimes) Ordinance, where there is provision extant (in ISA and DDA (Special Preventive Measures)) excluding judicial review of any act done in the exercise of discretionary powers by the executive save only as to any question on compliance with procedural requirements.

That provision on non-justiciability is notably absent in the Act which suggests the non-exclusion of judicial review of the Minister's subjective satisfaction. However, even before the amendments (effective 24 August 1989) to the ISA and DDA (SPM), Courts had in the cases of *Karam Singh* (*supra*), *Chua Teck* (*supra*), *Karpal Singh* (*supra*), *Theresa Lim Chin Chin* (*supra*), *Wong Fook Nyen* (*supra*) and *Yeap Hock Seng* (*supra*) taken the consistent stand by refusing to act as the review board of the Minister's satisfaction or sufficiency or reasonableness of the grounds relied by him, for to the Minister the Act invests the satisfaction and to him that satisfaction rightly belongs.

It is noted that the applicants are merely impugning their arrest and detention for there is yet no order under s. 2(ii) restricting their residence to any particular area.

The status of an arrested person under s. 2(i) of the Act was articulated by the Supreme Court in *Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Ors. v. Cheow Siong Chin* [1988] 1 MLJ 432 as "no different from the arrest of a person who is alleged to have committed a crime and that his detention pending an order under 2(ii) of the Enactment is no different from the remand in custody of an arrested person pending trial".

That the arrest and detention of the applicants was in the exercise of a valid legal power is beyond doubt. In the warrant of arrest and detention under s. 2 or the Act, the Minister concerned has declared that after studying the information furnished to him in writing he is satisfied without requiring any further inquiry that reasonable grounds exist for believing that the applicants should be required to reside in a particular area. That complies with the procedure outlined by Hashim Yeop Sani CJ in *Phua Hing v. Timbalan Menteri Hal Ehwal Dalam Negeri* [1990] 1 MLJ 173. The burden of proving lawful justification for the applicants' detention lies with the respondent discharged by reliance on the warrant of arrest and detention issued in exercise of s. 2(i) of the Act, the valid legal power.

On issue that the statutory format of the warrant of arrest and detention (Form A) was not strictly followed, certainly a comparison of the statutory format with the warrants executed is needed. The prescribed statutory format reads as following:

> whereas it appears to me in accordance with s. 2 of the Restricted Residence Act 1933, that there are reasonable grounds for believing that an order under 2(ii) of the said Act ...

while the warrants executed against the applicants read as follows:

> ...there are reasonable grounds for believing that an order under 2(ii) or 2A of the said Act

Undeniably, there was a deviation from the statutory format, for the words "or s. 2A" in the warrants executed are not found in the statutory format.

Section 2A of the Act reads as follows:

> Without prejudice to s. 2, the Minister may by order direct that any person named in the order shall be placed under police supervision for any period not exceeding five years and may renew any such order for a further period or periods not exceeding one year at one time.

That 2A provision gives to the Minister a further option (besides orders under s. 2) i.e., to direct a person named in an order under ss. 2 (i) or 2(ii) to be placed under police supervision. Section 2A however is an inserted provision and although Form A was prescribed without any inkling of s. 2A, it should rightly have been amended to accommodate the advent of s. 2A. But Form A was not so amended and it is now alleged that the warrants executed are misleading and the defect in the warrants cannot be saved by s. 62 of the Interpretation Act 1967.

In the case of *Perbadanan Pembangunan Pulau Pinang v. Chong Ah Yok* [1993] 2 CLJ 351 the defendant alleged that the plaintiff's application without the words "in the matter of ..." was not in accordance with the format provided in Form 8A of the RHC 1980. However, it was held the absence of those words was not misleading which would tend to cause a substantial deviation from the original format.

Closer to the provisions of the Act is *Lim Hai Sun v. Officer-in-Charge Drug Rehabilitation Centre & Anor*. [1992] 3 CLJ 1602 where a different form was used but the difference was held not to be misleading.

Numerous authorities were cited that the *de minimis non curat lex* maxim has no application whatsoever in cases of procedural defect. Certainly any non-compliance of mandatory provisions will render the arrest or detention not in accordance with law, for such non-compliance will deny the detenu his legal right who would be prejudiced thereby.

Admittedly the warrants against the applicants informed them of the alternative orders under ss. 2 or 2A. But the alternatives (as earlier observed) are at the disposal of the Minister, and in truth the warrants without the words "or s. 2A" would be misleading as it would not fully inform the applicants of the complete range of possible orders pursuant to their arrest and detention. The addition of those words was therefore necessary to reflect factual realities, and the deviation from the statutory format was neither substantial nor calculated to mislead. In cases (as the present) which turn on the question whether statutory requirements or provisions have been complied, the *de minimis* maxim has no application whatsoever; however, s. 62 of the Interpretation Act applies and the warrants are not invalidated by inclusion of the words "or s. 2A".

Although the Court cannot investigate the sufficiency of the matters upon which the satisfaction of the Minister is grounded, yet it will examine the grounds disclosed by the Minister to see their relevancy to the object which the Act prescribes.

Unlike the Internal Security Act, the Dangerous Drugs (Special Preventive Measures) Act and the Emergency Ordinance where the purpose and intent is clearly promulgated and discernible, the object of the Act is not obvious.

The preamble to the Act, which normally deposes the intent is also not helpful. In announcing rather blandly that the Act is "for the making and enforcement of orders regarding residence in and exclusion from certain areas" the preamble merely describes the nature of the restriction and prohibition orders without stating the purpose or intent of the Act.

Notwithstanding the delegation of both wide ranging and drastic powers including the power to banish any person to any part of Malaysia, the Act as compared to other detentive legislation is indeed bare. The justification for the restriction and prohibition orders is undeclared and the procedure is hardly much to talk about.

On the objects of the Act, Harun J (as he then was) in *Cheow Siong Chin v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & 2 Ors*. [1986] 2 MLJ 235 had this to say:

> ... it is argued on behalf of the plaintiff that the grounds of his detention *viz*. cheating the public is not within the scope ambit and purview of the enactment. In *Yeap Hock Seng* it was held that the Court can examine the grounds disclosed by the Minister to see they are relevant to the object which the law prescribes. The problem here is that the object of the Enactment is not obvious...

The ruling of Harun J that cheating the public is within the ambit and scope of the Act, was upheld by the Supreme Court who also pronounced the object of the Act as the maintenance of public order.

There are numerous reported cases on detention under the Act, but unfortunately, most give little hint to the grounds of detention. However, such cases there are with grounds, illustrate the use of the Act:

(a) in *Cheow Siong Chin v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & 2 Ors.* (*supra*) the detenu as a registered dealer in commodity trading, was alleged to have cheated many investors by giving false promises and making false declarations resulting in the investors sustaining considerable financial losses.

(b) *Lim Nyun Fui v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors.* [1991] 1 MLJ 350 the detenu was alleged to be a promoter of illegal 4-digit lotteries in Sandakan

(c) innumerable instances where the detenu was alleged to be a member of a secret society or living on immoral earnings.

The Act therefore was used by the Minister to banish racketeers and persons involved in secret societies, gaming and vice, none of which were ever held to be outside the ambit and scope of the Act.

The applicants contend that the grounds relied by the Minister are outside the scope and ambit of the Act for it is not intended to banish footballers. This contention deserves consideration, but as remarked most poignantly by Harun J in *Cheow Siong Chin*, "the problem here is that the object of the Enactment is not obvious ..."

Nevertheless, the object of the Act has been judicially pronounced as the preservation of public security and order. There is no judicial definition on "public security" but in *Re: Tan Boon Liat* [1976] 2 MLJ 83 Abdoolcader J (as he then was) adumbrated the norms and principles enunciated in Indian authorities on "public order", paraphrased now as follows:

(i) public order is a narrower concept than the ordinary maintenance of law and order,

(ii) maintenance of public order entitles the executive authority to take action to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

(iii) it means the tranquility and security which every person feels under the protection of the law, a breach which is an invasion of the protection which the law affords.

(iv) a danger to human life and safety and the disturbance of public tranquility falls within the purview of public order.

(v) the maintenance of public order is equated with public tranquility,

(vi) that public safety is a part of the wider concept of public order, and public safety means the security of the public,

(vii) the contravention of any law always affect order but before it can be said to affect public order it must affect the community at large.

(viii) disturbance of public order is to be distinguished from an act directed against an individual which does not disturb society to the extent of causing a general disturbance of public tranquility.

The acts allegedly engaged by the applicants must affect the public at large if it is to come within the purview of public order. That bench mark was obviously met in *Cheow's* case (*supra*) and in cases involving illegal lotteries, secret societies and immoral activities.

According to the learned Federal Counsel, football has a large following in the country, and the rigging of football matches affect a large section of the footballing public and is not conducive to public order and tranquility.

It cannot be refuted that the alleged acts of the applicants affect not just an individual. The remaining question is whether the grounds relied by the Minister fall within the scope and ambit of the Act, and even so, should ordinary laws be used. On the latter the answer can only be that ordinary laws are complimentary and not substitutes, and preventive measures such as in the Restricted Residence Act 1933 are exercisable at the option of the executive if it is relevant to the objects of the Act.

The arrest and detention of footballers *per se* will evidently be outside the scope and ambit of the Act. However, the applicants were arrested and detained not so much because they are or were footballers but of their alleged complicity with bookmaking syndicates to rig premier league football matches, which they as members of their respective teams obviously could influence.

The object of the Act is to preserve public security and order, and used consistently to curb vice and crooked activities, it is truly within the Act's purview to restrict the residence of those involved in the rigging of premier league football matches as such an activity is a fraud on the unsuspecting public.

Both the applications are therefore dismissed.